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No. 79-9

In the Supreme Court of the United States

OCTOBER TERM, 1978

PLUMAS COUNTY BOARD OF SUPERVISORS, ET AL.,
PETITIONERS

v.

PATRICIA R. HARRIS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE FEDERAL RESPONDENT IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A-1 to A-9) is reported at 594 F. 2d 756. The opinion of the district court (Pet. App. B-1 to B-13) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on April 3, 1979. The petition for a writ of certiorari was filed on July 2, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether a state regulation providing for welfare payments on behalf of unborn children violates Title IV(A) of the Social Security Act, 42 U.S.C. 601 *et seq.*

2. Whether petitioners have standing to challenge a federal regulation providing for federal financial participation in state payments for unborn children under the Aid to Families with Dependent Children program.

3. Whether the district court erred in refusing to interfere in contempt proceedings against petitioners.

STATEMENT

In *Burns* v. *Alcala*, 420 U.S. 575 (1975), this Court held that states receiving federal financial assistance under the Aid to Families with Dependent Children (AFDC) program are not required to offer welfare benefits to pregnant women for their unborn children. Nonetheless, since 1949, California has voluntarily included unborn children within the coverage of its AFDC plan (Pet. App. A-5, C-8). Regulations of the Department of Health, Education, and Welfare provide that, when states offer such payments to needy pregnant women as part of an approved AFDC plan, matching federal grants will be made available (*id.* at A-3, C-8). See 45 C.F.R. 233.90(c)(2)(ii). California's plan has been approved by the Secretary (Pet. App. A-3), and the State therefore receives matching federal funds under the AFDC subchapter of the Social Security Act, 42 U.S.C. 601 *et seq.*[1]

[1]The basic features of the AFDC program are described in *King* v. *Smith*, 392 U.S. 309, 316-317 (1968) (see Pet. App. A-2). The California plan is "county administered and state supervised, with the counties acting as agents for the state in making the prescribed payments" (Pet. App. A-3). The federal government pays 50% of the cost of AFDC grants, the State pays 33.75%, and the county the remaining 16.25% (*ibid.*).

In February 1976, petitioners, the governing body of a California county and its individual members, filed this suit in the United States District Court for the Eastern District of California. They argued that the regulation of the California Department of Benefit Payments establishing the eligibility of unborn children for AFDC grants and the HEW regulation permitting federal financial participation in state payments for unborn children violate Section 406(a) of the Social Security Act, 42 U.S.C. 606(a). Petitioners sought to enjoin respondent state officials from requiring AFDC payments on behalf of unborn children. They also sought to enjoin the Secretary from providing federal funds for such payments and from approving state plans that make unborn children eligible to receive AFDC grants.

The district court dismissed petitioners' challenge to the California regulation for failure to state a claim on which relief could be granted (Pet. App. B-5 to B-11). The court observed that, under the California Supreme Court's decision in *California Welfare Rights Organization* v. *Brian*, 11 Cal. 3d 237, 520 P. 2d 970, 113 Cal. Rptr. 154, cert. denied, 419 U.S. 1022 (1974), the State's obligation to make welfare payments to pregnant needy women is independent of the availability of federal funds to share the cost of such payments. And, the court noted (Pet. App. B-6), petitioners "do not deny that the State of California could adopt a program of aid to pregnant needy women, independent of the Federal AFDC program." Accordingly, the court held that petitioners could not obtain relief on the ground that the California regulation is inconsistent with the Social Security Act.

The district court also ruled that petitioners lack standing to challenge the Secretary's regulation authorizing federal financial participation in state payments for

unborn children. Because petitioners' "obligation to pay welfare would continue in effect under State law even if the federal regulation became for any reason inoperative" (Pet. App. B-11), the court found that petitioners suffered no injury by virtue of the availability of federal funds. Relying on *Frothingham* v. *Mellon*, 262 U.S. 447 (1923), that court concluded that any injury petitioners might suffer in their capacity as federal taxpayers was insufficient to confer standing to attack the regulation.

The court of appeals affirmed (Pet. App. A-1 to A-9). The court first observed (*id.* at A-5) that a few months after the district court's decision, the California Supreme Court, in *Ross* v. *Superior Court*, 19 Cal. 3d 899, 569 P. 2d 727, 141 Cal. Rptr. 133 (1977), reiterated its view that California's obligation to make welfare payments to needy pregnant women is derived solely from the State's statutory welfare scheme and therefore is unaffected by this Court's interpretation of federal law in *Burns* v. *Alcala*, *supra*. Accordingly, the court of appeals held that the California regulation providing for AFDC payments on behalf of unborn children does not violate the Social Security Act. Citing three decisions of this Court,[2] the court of appeals declared that a state AFDC plan is in conflict with the Act only "when it does not incorporate the *minimum* requirements of 42 U.S.C. §602" (Pet. App. A-6).

The court of appeals also sustained the district court's ruling that petitioners lack standing to challenge the Secretary's regulation offering federal financial participation in state payments for unborn children. Because California law requires such payments irrespective of

[2] *Carleson* v. *Remillard*, 406 U.S. 598 (1972); *Townsend* v. *Swank*, 404 U.S. 282 (1971); *King* v. *Smith*, 392 U.S. 309 (1968).

federal financial assistance, the court of appeals agreed with the district court's conclusion that petitioners "cannot claim to be aggrieved" by the disputed regulation (Pet. App. A-8).

ARGUMENT

The decision of the court of appeals is correct and does not warrant further review.

1. As petitioners apparently agree (see Pet. App. B-6), the relevant Social Security Act provision (42 U.S.C. 602) imposes only minimum requirements for state AFDC plans. To the extent it is pertinent here, Section 406(a) of the Act, 42 U.S.C. 606(a), simply identifies the "dependent children" who *must* be assisted if a state elects to participate in the AFDC program. If a state not only meets those requirements but also chooses to make AFDC benefits available to persons other than the ones receiving mandatory payments, federal law is not violated. In *Brian* and *Ross*, the California Supreme Court has held that the State's regulation providing for AFDC payments on behalf of unborn children is not dependent on federal financial participation in such payments.[3]

[3] As the courts below held (Pet. App. A-6, B-8 to B-9), petitioners' reliance on Cal. Welf. & Inst. Code § 11450 (West Supp. 1979) in this connection is misplaced. That provision does not mean that California will not make payments for unborn children if federal support for such payments is eliminated. Section 11450 applies only to the situation in which the total federal AFDC contribution is computed by adding together the federal share of the welfare benefits paid to each individual recipient. Since 1965, California has not employed this method of calculating the amount of federal aid to be paid to the State under the AFDC program. Rather, the State now computes the federal contribution according to the aggregate method authorized by 42 U.S.C. 1318. Under this scheme, the federal government simply pays 50% of the State's total cost in administering its AFDC plan. In light of this development, the court of appeals correctly concluded that "the federal and county dollar-per-person figures set forth in § 11450 no longer have significance" (Pet. App. A-6).

Petitioners' argument that the regulation is inconsistent with federal law therefore must fail. The state regulation would remain unchanged, even if the Secretary's regulation making federal funds available for payments to needy pregnant women were invalidated.

Petitioners nonetheless contend (Pet. 13-15) that the district court erred in dismissing their challenge to the California regulation for failure to state a claim on which relief could be granted. They assert that, in reaching its decision, the court considered materials outside the pleadings and therefore should have treated the Secretary's motion to dismiss as a motion for summary judgment. But petitioners do not divulge how they would have been helped if the district court had followed this preferred course. The Secretary moved in the alternative for summary judgment (Pet. App. B-3), and petitioners do not suggest that they were prevented from introducing any relevant materials on the question of the interdependence of the state and federal regulations. Moreover, the affidavits that the district court allegedly improperly considered could hardly have had the importance petitioners attribute to them, in light of the California Supreme Court's decisions in *Brian* and *Ross*. Those decisions, not the affidavits of a state welfare department official, establish that the State's obligation to provide benefits to needy pregnant women is independent of the availability of federal funds to share the cost of such payments. At most, the affidavits were significant because they informed the court of California's method of computing the federal contribution to the cost of the State's AFDC payments (see note 3, *supra*). Petitioners did not and do not assert that the affidavits inaccurately described the administration of the California AFDC plan.

2. In view of the independence of the California regulation, the district court and the court of appeals

correctly concluded that petitioners lack standing to challenge the Secretary's decision to permit federal financial participation in the State's AFDC payments on behalf of unborn children. Petitioners are not aggrieved by the federal government's contribution to such payments and they would not benefit if the federal contribution were terminated. Indeed, in the latter event, California counties would simply be required to bear twice their current financial burden in connection with the welfare benefits petitioners oppose. Under these circumstances, the courts below properly ruled that petitioners did not show any injury "that is likely to be redressed by a favorable decision" and therefore lack standing to attack the Secretary's regulation. *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 38 (1976).[4]

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[4]Because the lower courts found that petitioners lack standing to challenge the Secretary's regulation, they did not rule on the validity of the Secretary's authorization of federal financial participation in voluntary state AFDC payments to needy pregnant women. In *Burns* v. *Alcala*, *supra*, 420 U.S. at 586, this Court explicitly reserved the questions "whether HEW has statutory authority to approve federal participation in state programs ancillary to those expressly provided in the Social Security Act * * *, or whether 42 U.S.C. §1302 authorizes HEW to fund benefits for unborn children as a form of temporary aid to individuals who are in the process of qualifying under federal standards." Petitioners stress (Pet. 8-9) that three courts of appeals have expressed disapproval of the Secretary's practice of assisting state payments for unborn children. See *Wisdom* v. *Norton*, 507 F. 2d 750, 756 (2d Cir. 1974); *Parks* v. *Harden*, 504 F. 2d 861, 872 (5th Cir. 1974), vacated, 421 U.S. 926 (1975); *Alcala* v. *Burns*, 494 F. 2d 743, 746 (8th Cir. 1974), rev'd, 420 U.S. 575 (1975). But each of the statements cited by petitioners is dictum in a court of appeals' opinion addressing the question that this Court answered in *Burns*, *i.e.*, whether a state AFDC plan *must* provide for payments for unborn children. And, as the courts below held, petitioners are not the proper parties to litigate the validity of the Secretary's regulation offering financial help to states that voluntarily make such payments. For this reason, this case does not present an appropriate occasion for the Court to resolve the issues left open in *Burns*.

3. Petitioners also maintain (Pet. 15-17) that the district court erred in deciding not to interfere with pending state and federal contempt proceedings arising out of petitioners' refusal to pay needy pregnant women the welfare benefits mandated by state law.

The district court correctly ruled (Pet. App. B-12), however, that petitioners had an adequate opportunity to raise their federal constitutional defenses in the contempt proceedings and, accordingly, were not entitled to equitable relief. In such a situation, principles of comity require that federal courts not intrude into the contempt process of a state's judicial system. *Juidice* v. *Vail*, 430 U.S. 327 (1977). See also *Moore* v. *Sims*, No. 78-6 (June 11, 1979). Moreover, as the court of appeals noted (Pet. App. A-4 n.2), both the federal and state contempt actions have now proceeded to final judgment. Petitioners have not sought review of those judgments in this Court, and they cannot use the present case to relitigate matters already resolved against them in other proceedings.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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